

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
W.R. GRACE & CO., et al.,) Case No. 01-1139(JKF)
)
Debtors.) Jointly Administered
)

**ARROWOOD'S COUNTER DESIGNATIONS AND OBJECTIONS TO
BNSF RAILWAY COMPANY'S CONFIDENTIAL INITIAL DEPOSITION
DESIGNATIONS OF TESTIMONY OF JEFFERY POSNER, RICHARD FINKE, JAY
HUGHES, AND PETER VAN N. LOCKWOOD**

EXHIBIT C

Dated: August 20, 2009
New York, New York

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Deposition Designation Key:

AR = ARROWOOD

OBJ = OBJECTION

CDC = COUNTER DESIGNATION FOR COMPLETENESS

R = RELEVANCE

BE = BEST EVIDENCE

CLC = CALLS FOR LEGAL CONCLUSION

IH = INCOMPLETE HYPOTHETICAL

LF = LACKS FOUNDATION

CFS = CALLS FOR SPECULATION

S = SPECULATIVE

H = HEARSAY

LPK = LACKS PERSONAL KNOWLEDGE

AFNE = ASSUME FACT NOT IN EVIDENCE

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In Re: : Chapter 11
: :
: Case No.
W.R. GRACE & CO., et al, : 01-01139 JKF
: :
: (Jointly
Debtors : Administered)

- - -
Friday, May 1, 2009
- - -

Oral deposition of PETER VAN
N. LOCKWOOD, ESQUIRE, taken pursuant to
notice, was held at the offices of CAPLIN
& DRYSDALE, One Thomas Circle N.W., Suite
1100, Washington, DC 20005, commencing
at 9:43 a.m., on the above date, before
Lori A. Zabielski, a Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Pennsylvania.

- - -
MAGNA LEGAL SERVICES

Seven Penn Center

1635 Market Street

8th Floor

Philadelphia, Pennsylvania 19103

1 form.

2 THE WITNESS:

3 Hypothetically, probably yes. It
4 would be more difficult, but,
5 hypothetically, yes. You could
6 have -- we have had some plans
7 that had coverage in place
8 agreements with insurers, for
9 example, that we felt satisfied
10 524(g). But you have to get the
11 insurers' agreement to have a
12 coverage in place agreement.

13 BY MR. BROWN:

14 Q. Okay. Let's go now to
15 condition (r) -- I am sorry. Condition
16 (s).

17 A. Yes.

18 Q. Now, for purposes of my
19 question, I want you to assume that when
20 I use the term "settled asbestos
21 insurance companies," I want you to
22 assume that those that are pre-petition.

23 A. Okay.

24 Q. And my question is a very

1 general one, because I have heard
2 different views, and that is, what
3 benefits are being provided by or on
4 behalf of settled asbestos insurance
5 companies listed on Exhibit-5?

6 A. It is the position of the
7 ACC that Grace is paying close to
8 \$3 billion of value to the Trust on
9 behalf of not only itself but a variety
10 of other protected parties, including
11 Non-Debtor affiliates and, in this
12 particular case, settled asbestos
13 insurers.

14 And it is doing so on behalf
15 of settled asbestos insurers because
16 those insurers have indemnity claims
17 against Grace, which are being, if they
18 hypothetically could ever occur, are
19 being channelled to the Trust as a means
20 of protecting Grace against such -- well,
21 let me back up.

22 The purpose of putting
23 settled asbestos insurers in here is not
24 to provide a gratuitous asbestos insurers

1 because we think they are nice folks.

2 Q. I didn't think so.

3 A. Settled asbestos insurers,
4 by definition, are insurers that have
5 indemnity rights against Grace.

6 Q. They have also paid a lot of
7 money?

8 A. And they paid a lot of money
9 in the past. But the past money -- money
10 is fungible. The past money went into
11 Grace's coffers, went out or didn't go
12 out, et cetera. But they are not being
13 asked for any new money.

14 But Grace has an economic
15 interest in not having asbestos PI claims
16 brought against those insurers that could
17 then trigger an indemnity obligation of
18 Grace to the insurer against which that
19 asbestos PI claim was asserted. They
20 have an economic interest in preventing
21 that.

22 So the deal is channel any
23 such claim that might give rise to the
24 asbestos indemnity claim to the Trust,

1 and in exchange for that, part of what
2 Grace is paying you is to get rid of
3 asbestos PI claims which include indirect
4 asbestos PI claims for indemnity or
5 direct asbestos PI claims for indemnity.

6 Q. Okay.

7 A. And that's the basis.

8 Q. I think you said at the very
9 beginning of either the last question or
10 the one before that Grace was
11 contributing 3 million?

12 A. Billion.

13 Q. That's what I thought.

14 Okay. I just wanted to make sure I had
15 the number correct.

16 A. I mean, that's our view of
17 the approximate amount of what they were
18 contributing at the time we made the
19 deal, I guess would be a better way to
20 put it. There are other people that
21 might value it differently.

22 Some of things that were
23 worth more at the time the deal was made
24 are worth less today but hopefully will

1 what the scope of the injunction is
2 that's in your client's Plan.

3 A. I described, I thought, in
4 some detail what I thought the scope of
5 the injunction is. But if you want to
6 turn to the injunction provisions and ask
7 me specific questions about their scope,
8 I am sure you will do that.

9 Q. We will get to the
10 injunction.

11 A. I am sure you will do that.

12 Q. Does this language that we
13 are referring to here under 7.13 the
14 underscored language release claims that
15 BNSF or the Libby claimants might have or
16 might choose to assert against settled
17 asbestos insurance companies?

18 MR. FINCH: Objection to
19 form, calls for legal conclusion.

20 MS. HARDING: Same
21 objection.

22 THE WITNESS: I think those
23 are the same. Those claims are
24 channelled to the Trust, and I

1 don't believe the intendment of
2 this paragraph is to sort of mean
3 that the claims vanish, if that's
4 what you mean by release.

5 What I believe the
6 intendment of this claim is is
7 that this provision is that it's
8 sort of a belt-and-suspenders
9 piece of channelling injunction.

10 BY MR. BROWN:

11 Q. So the claims are both
12 enjoined, channelled, and then released?

13 A. Against the
14 asbestos-protected parties but not
15 against the Trust, for example.

16 What I can't tell from your
17 question is whether you are sort of
18 insinuating that somehow or another the
19 release has the effect of freeing the
20 Trust from liability for these claims,
21 which I don't believe it does.

22 Q. What's the consideration for
23 the release insofar as it pertains to the
24 Sealed Air indemnified parties and the

1 If that's true -- but it
2 still has to arise -- Scotts has to have
3 been negligent in, if you will,
4 re-selling a Grace product, and so the
5 underlying exposure would be to the Grace
6 product.

7 As the Plan is drafted, if
8 you look at the definition of asbestos
9 personal injury claim and sort of trace
10 that through to what winds up going into
11 the Trust, it would not cut off the fact
12 that somebody who was selling a Grace
13 product had some sort of additional basis
14 for the liability of that product. They
15 were being sued as a result.

16 So the answer is that,
17 unless the court says that claim cannot
18 be channelled to the Trust, it is
19 channelled to the Trust.

20 Q. Okay. Let's go to Section
21 8.25, Asbestos PI Channelling Injunction.

22 A. I have it.

23 Q. I am sorry. I am just
24 looking at my notes here.

1 I am correct, am I not, that
2 the asbestos PI channelling injunction,
3 among other claims, enjoins any claims
4 that BNSF has against settled asbestos
5 insurance companies that arise from
6 asbestos PI claims?

7 A. Generally stated, I believe
8 that to be correct.

9 Q. Are there any exceptions
10 about when you are aware?

11 A. Again, I would have to parse
12 the definitions to see whether there
13 might be some hypothetical possibility of
14 a claim that wouldn't be covered. But to
15 the extent that BNSF is asserting against
16 settled insurers claims that are based on
17 asbestos-related injuries arising from
18 Grace Vermiculite that somehow or another
19 BNSF was involved with and held liable
20 for, those claims are channelled to the
21 Trust.

22 Q. Okay. And are the claims
23 that the Libby claimants have asserted or
24 could assert against the settled asbestos

AR'S
OBJ:
CDC